



January 7, 2002

Mr. Greg S. Boling  
Brown & Hofmeister, LLP  
1717 Main Street, Suite 4300  
Dallas, Texas 75201

OR2002-0088

Dear Mr. Boling:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157080.

The Town of Flower Mound (the "town") received a request for certain information regarding a named officer, including (1) citizen complaints lodged against the officer, (2) training the officer received, and (3) the officer's department record. You inform us that the town does not possess any citizen complaints lodged against the officer. You further inform us that the town will release some of the responsive information to the requestor, but you claim that the remaining responsive information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions claimed, the information submitted, and the comments provided by the requestor. *See Gov't Code § 552.304* (permitting interested party to submit reasons why requested information should or should not be released).<sup>1</sup>

We first address your claims under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory,

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<sup>1</sup>You state that the submitted information is "illustrative" of the exceptions claimed. If you mean that the submitted information is a representative sample of responsive documents held by the town, we assume that the representative sample is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

or by judicial decision.” This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 (1992) (regarding information about public employee’s participation in group insurance program, retirement benefits beneficiaries, tax exempt reimbursement accounts, and direct deposit), 545 (1990) (regarding information about a public employee’s participation in a deferred compensation plan). We have marked the financial information that must be withheld under section 552.101 in conjunction with the common-law right of privacy.

Section 552.101 also encompasses information protected by other statutes. Criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov’t Code* § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See Open Records Decision No. 565 (1990).* Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked the submitted information accordingly.

The submitted information also contains a declaration of psychological and mental health required by the Texas Commission on Law Enforcement Officer Standards and Education that is confidential pursuant to Section 1701.306 of the Occupations Code. Section 1701.306 provides as follows:

(a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:

(1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and

(2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

(b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. *A declaration is not public information.*

Therefore, you must withhold the declaration under section 552.101 in conjunction with section 1701.306. We have marked the documents accordingly.

We note that the submitted information contains bank account numbers. The Seventy-seventh Legislature passed Senate Bill 694, signed by the Governor and effective May 26, 2001, which added a new section 552.136 to the Act.<sup>2</sup> This newly enacted exception makes certain account numbers confidential. It provides in relevant part:

**Sec. 552.136. CONFIDENTIALITY OF CREDIT CARD, DEBIT CARD, CHARGE CARD, AND ACCESS DEVICE NUMBERS.**

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

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<sup>2</sup>The Legislature also enacted two other bills that add a section 552.136 to chapter 552. One is House Bill 2589, which makes certain e-mail addresses confidential. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2589, § 5 (to be codified at Gov't Code § 552.136). The other is Senate Bill 15, which makes information maintained by family violence shelter centers confidential. *See* Act of May 14, 2001, 77th Leg., R.S., S.B. 15, § 1 (to be codified at Gov't Code § 552.136). In addition, Senate Bill 694 enacted the same language from House Bill 2589 regarding the confidentiality of e-mail addresses, but codified it as section 552.137 of the Government Code.

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Act of May 14, 2001, 77th Leg., R.S., S.B. 694, § 1 (to be codified at Gov't Code § 552.136). We have marked the information the town must withhold under section 552.136.

We next address your claim under section 552.117. Section 552.117(2) excepts from public disclosure information that reveals a peace officer's home address, home telephone number, social security number, and whether the officer has family members. "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure. Under section 552.117(2), a governmental body must also withhold the officers' *former* home addresses and telephone information from disclosure. *See* Open Records Decision No. 622 (1994). We have marked the information that must be withheld pursuant to section 552.117(2).

Finally, we turn to your claim under section 552.130, which provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Thus, you must withhold any Texas driver's license number, vehicle identification number, and license plate number under section 552.130. We have marked the documents accordingly.

In sum, you must withhold the financial and CHRI information and the declaration of psychological and mental health that we marked under section 552.101. You must also withhold the bank account numbers we marked under section 552.136 and the information concerning the named officer that we marked under section 552.117. In addition, you must withhold driver's license information that we marked under section 552.130. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

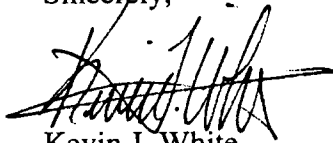
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. White", with a stylized flourish extending from the end.

Kevin J. White  
Assistant Attorney General  
Open Records Division

KJW/seg

Ref: ID# 157080

Enc. Marked documents

c: Mr. Mike Lipscomb  
207 West Hickory Street, Suite 100  
Denton, Texas 76201  
(w/o enclosures)